How to Get Market-Based Rate Authority

This document focuses on the process of applying for market-based rate authority. The application process, the content of an application, and the regulatory responsibilities of having market-based rate authority are described below.

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TERMS USED IN THIS DOCUMENT

Public Utility: Under the Federal Power Act, any entity that owns or operates facilities which are engaged in the sale of electric energy for resale, or transmission of electric energy in interstate commerce.

Traditional Electric Utility: A utility with a franchised service territory, which generally owns transmission, generation, and distribution facilities. Traditional electric utilities may have captive customers.

Power Marketer: An entity that takes title to electric power generated by another entity, and sells that power. A power marketer may or may not be affiliated with a traditional electric utility.

Qualifying Facility : A cogeneration facility or small power production facility which qualifies for certain exemptions from regulation as defined in the Public Utilities Regulatory Policies Act of 1978 (PURPA).

Independent Power Producer: Any entity that owns or controls generation that is not affiliated with a traditional electric utility.

Rate Schedule: An agreement, contract, or statement providing for one or more types of electric service stipulating the terms and conditions of the agreement between the selling utility and the purchaser.

Rate Tariff: The compilation of effective rate schedules and service agreements on file for an entity. For an entity with market-based rates, this usually consists of only a market-based rate schedule.

Power Broker: An entity that acts as agent to bring together buyers and sellers of power, not involving taking title of power.

Aggregation of Power: Acting as agent for a group of customers. Aggregation of power does not involve the transfer of title to the Aggregator.

Affiliate Abuse and Reciprocal Dealing: Transactions between a traditional public utility (vertically integrated) and an affiliated entity that result in the transfer of benefit from the traditional public utility (and its captive customers) to the affiliated entity (and the shareholders). Affiliate is defined in 18 C.F.R § 161.2.

BACKGROUND

When Congress passed the Federal Power Act of 1935 it conferred regulatory authority over the sale of electricity for resale to the Federal Energy Regulatory Commission (FERC or the Commission, and at that time called the Federal Power Commission). Under this law, entities wishing to sell electricity at wholesale must have their rates accepted for filing at the FERC in the form of a rate schedule or tariff.

In order to receive Commission authorization to make sales at market-based rates, an entity must file a market-based rate application containing a proposed market-based rate schedule with the Commission. This application is filed as a pleading with the Commission pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824 (1994), and Section 35 of the Commission's Regulations, 18 C.F.R. § 35 (2002).

There is no specific application form to secure authorization to sell electricity at market-based rates; however certain specific issues must be addressed in an application in order to have a market-based rate schedule accepted for filing with the Commission. If, after analyzing an application, the FERC accepts an application for market-based rates for filing, the applicant is then authorized to make sales under the market-based rate schedule included in the application.

FERC orders granting market-based rates are issued by the Commission itself or under delegated authority by one of the Directors in the Division of Tariffs & Market Development. Orders issued under delegated authority are generally not published; orders issued by the Commission are published in the FERC Reports. Recently issued orders of either type can be found on eLibrary, accessible through FERC's website. The issuance date of an order is not necessarily the effective date of the applicant's market-based rates. The effective date of any rate is contained in the order accepting that rate for filing.

The FERC does not have jurisdiction over retail sales of electricity. Entities wishing to make retail sales of electricity must receive authorization from the state public utilities commission (sometime called a public service commission, a department of public utilities, or a corporation commission) with jurisdiction over the retail market in which the entity wishes to sell. Further, no Federal approval is needed if an entity will only broker power or act as an aggregator of power. It is not necessary to create separate entities to sell at wholesale, sell at retail, broker power, and aggregate power. One entity can participate in all of the aforementioned activities at the same time.

APPLYING FOR MARKET-BASED RATE AUTHORITY

As mentioned above, authorization to sell electricity and related products at market-based rates is requested by filing a pleading with the Commission. A sample pleading can be found on the FERC website.

To help in the application process, copies of applications previously filed with the Commission can be requested by calling the Commission's Public Reference Room. It is important to request any amendments to an application which were filed subsequent to the original filing. To request copies of an application from the Public Reference Room (202-502-8371 or 866-208-3676), a caller must reference the name of the applicant and the docket number of the application. Previously filed applications and amendments (and Commission orders relating to those filings) can also be found on eLibrary by using the docket number of the application.

Applicants should be careful to use the applications of entities that closely match their own corporate structure and affiliation situation as examples. For instance, a power marketer that is affiliated with a traditional electric utility should follow a recently accepted application from a similarly situated entity as an example. If such a power marketer submitted an application patterned after one submitted by an independent power producer, the application would likely be deficient.

In general, every market-based rate application should contain the following information:

- A description of all the business activities of the applicant.
- A description of the applicant's upstream ownership and their business practices. (A chart maybe helpful if upstream ownership is complicated.)
- A description of the applicants affiliates and their business practices. If the applicant does not have affiliates, the application should explicitly so state. The term "affiliate" is defined in 18 C.F.R. 161.2.
- Contact information including phone numbers for the applicant in both the transmittal letter and application itself. If the applicant is represented by an attorney, please provide the attorney's contact information as well.
- A list of the regulations from which the applicant is requesting waiver. The waivers typically granted to market-based rate applicants are discussed later in this document.

- A discussion of the applicant's market power in generation and transmission, ability to erect barriers to market entry, and action satisfying the Commission's concerns with affiliate abuse and reciprocal dealing.
- A statement concerning the applicant's ownership or control (or affiliation with an entity that owns or controls) any interstate or intrastate natural gas fuel supply facilities; generation sites; construction/engineering firms which could engage in the construction of generation and transmission facilities; and any other barriers to entry.
- A proposed market-based rate schedule that complies with Order 614.
- A notice of filing suitable for publishing in the Federal Register. Pursuant to Section 35.8 of the Commission's regulation, a draft notice suitable for publication in the Federal Register must be included in all market-based rate applications. This draft notice should be included on a 3 ½" floppy disk as well as in hard copy form.

Once the applicant has constructed its submittal, an original and six copies of the transmittal letter, the application, the proposed rate schedule, and the draft Federal Register Notice should be sent with a copy of the draft Federal Register Notice on a 3 ½" floppy disk to:

Magalie R. Salas, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

DO NOT send application to the market-based rates group, Office of Markets, Tariffs and Rates, or any other party besides FERC's acting secretary. Applications sent to other parties may be lost.

From time to time, Commission staff may contact applicants regarding problems or questions about an application. If, for this or any other reason, an applicant decides to amend a market-based rate application, the amendment must be submitted in the same manner as the application itself.

An amendment is made by submitting a transmittal letter explaining the changes an applicant wishes to make, including the reasons for those changes, a draft Federal Register notice, and a copy of the draft Federal Register notice on a 3 ½" floppy disk. Like an initial application, applicants must submit an original and six copies of each of these documents. If the applicant revises the proposed rate schedule in the amendment, a red line version and a clean version of the revised rate schedule should be included in the amendment.

Under Section 205 (d) of the Federal Power Act, rates are permitted to go into effect after 60 days of notice to the Commission and to the public. (i.e., on the 61st day after the filing was submitted.) If an applicant submits an amendment to a filing, this notice period begins again. Applicants may request an effective date earlier than the expiration of this sixty day notice period. If the Commission grants this waiver, the market-based rate schedule may be allowed to become effective on a date of the applicants choosing (provided that date is at least one day after the filing date) or on the date of the order accepting the application for filing.

DOCKET NUMBERS

Each proceeding initiated by an entity at the Commission will be given a unique docket number. This includes initial rate filings, notices of succession, notices of termination, and notices of changes in status.

An initial application for market-based rates will be assigned a unique docket number in the following format: ER04-1234-000. The "ER04" indicates that the referenced electric rate filing was made during the 2004 fiscal year (October 2003 to September 2004). The "1234" indicated that this example docket number was the 1234th filing of that year. A root "000" sub-docket will also be assigned to the filing at that time.

When an entity submits its initial application for market-based rates, "ER03-___-000" should be included on the first page. This indicates to the Secretary's office that a submittal is a new proceeding. The Commission Secretary will assign the next available number to the filing.

If an entity submits an amendment to or supplements an application for market-base rates the cover letter of the supplement or amendment should refer to the docket number that has been assigned to the initial submission. Amendments will be assigned the next sub-docket under the original docket such as -001 and -002.

Once the Commission accepts or rejects an application, sub-docket -000 will be terminated. Any future filings, such as a notice of change in status or notice of succession, will be assigned the next sub-docket (-001, -002, etc).

DEMONSTRATION OF LACK OF MARKET POWER

An applicant for market-based rates must demonstrate that (1) it satisfies the Commission's generation dominance concerns; (2) it satisfies the Commission's transmission dominance concerns; (3) it cannot erect or control other barriers to entry; and (4) it satisfy the Commission's affiliate abuse and reciprocal dealing concerns. A market-based rate application must contain a thorough discussion of each of these areas.

In order to assist in the evaluation of this type of filing, applicants may wish to include the following declaratory statement in their applications, depending on its applicability:

> "Neither the applicant nor any of it affiliates own or control any generation or transmission facilities (other than interconnection facilities), or has a franchised service territory for the sale of electricity to captive customers."

Statements regarding the lack of control of a franchised service territory for the sale of electricity must apply to the applicant and its affiliates. Also, statements regarding the applicant's ownership or control of generation or transmission or the ability to erect other barriers to entry must hold for all of the applicant's affiliates.

GENERATION DOMINANCE

In its order issued in AEP Power Marketing, Inc., et al., 97 FERC ¶ 61,219 (2001) (AEP), the Commission announced a new generation market power screen, the Supply Margin Assessment (SMA), to be applied to market-based rate applications on an interim basis pending a generic review of new analytical methods for analyzing market power. The SMA screen is applied to all sales other than those in independent system operator (ISO) or regional transmission organization (RTO) markets with Commission-approved market monitoring and mitigation.

Under the SMA test, total available supply in a control area is determined. Total supply is equal to the amount of generation capacity within a control area plus the amount that can be imported into the control area. The import amount is determined on a path-by-path basis and then summed across all external paths. For each external path, the amount of generation that can be imported is equal to the lesser of total transfer capacity (TTC) on the path or the amount of uncommitted capacity at the point of receipt. The difference between total supply and peak demand is the "supply margin".

If the applicant's generation (including affiliated generation) is greater than the supply margin, the applicant is deemed to be pivotal in the market, meaning that at least some of the applicant's generation is required to meet peak demand. Pivotal suppliers fail the SMA test and, as a result, become subject to the market power mitigation outlined in AEP. An applicant will pass the SMA only if the generation it owns or controls is less than the supply margin.

All sales, including bilateral sales, into an ISO or RTO with Commission-approved market monitoring and mitigation will be exempt from the SMA and, instead, will be governed by the specific thresholds and mitigation provisions approved for the particular market. (AEP Power Marketing, Inc. et al., 97 FERC ¶ 61,219 at 61,969 (2001).)

TRANSMISSION DOMINANCE

The Commission is also concerned with an entity's ability to exercise market power resulting from the ownership or control of transmission assets. For this reason, when an entity that owns or controls transmissions assets or is affiliated with an entity that owns or controls transmission assets seeks market based-rate authority, the Commission has required the transmission owning entity to have an Open Access Transmission Tariff (OATT) on file with the Commission. An applicant should reference the docket number corresponding to the relevant OATT in its market-based rate application.

If the applicant does not own or control any transmission assets other than those necessary to interconnect to the relevant transmission system and is not affiliated with any transmission owning or controlling entity, the application should explicitly so state.

OTHER BARRIERS TO MARKET ENTRY

When applying for market-based rate authority, an applicant must inform the Commission of its affiliation with entities involved in natural gas sales, engineering or construction, or the ownership of generating sites as these affiliations could be used to erect barriers to entry into an applicants market.

In Louisville Electric & Gas Company, 62 FERC ¶ 61,016 (1993), the Commission stated that if an entity with market-based rates or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for natural gas service to a

potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of said entity's authority to sell power at market-based rate. Market-based rate applications must list all of the applicant's affiliates with the ability to erect other barriers to entry into the applicant's market.

AFFILIATE ABUSE AND RECIPROCAL DEALING

An applicant requesting market-based rate authority must describe its upstream ownership as well as its affiliation status. If its corporate structure is complex, the applicant should include a diagram to expedite Commission's analysis. All statements in a market-based rate application concerning the generation market power, transmission market power, and ability to erect other barriers to market entry must apply to the applicant's affiliates as well as the applicant itself.

When evaluating an application with respect to an applicant's affiliation, the Commission is concerned with the potential for affiliate abuse. In Heartland Energy Services Inc., 68 FERC ¶ 61,223 (1994) the Commission defined affiliate abuse as transactions between a public utility (usually owning or controlling a franchised service territory) and an affiliate that transfer benefit from captive customers to shareholders. For example, if a power marketer with market-based rate authority were to charge above-market prices to its affiliate traditional electric utility, that price markup could be rolled into the traditional electric utility's rates effectively causing an above market price for the traditional electric utility's customers (whether wholesale or retail). Since both of the entities fall under the same corporate structure, this transaction results in a transfer of benefit from the traditional electric utility's customers to the shareholders.

Applicants with a Traditional Electric Utility Affiliate:

To guard against affiliate abuse, the Commission requires Applicants who are affiliated with an entity that owns or controls a franchised service territory to include a prohibition on affiliate sales to that entity in their market-based rate schedule. This section of the rate schedule should read:

> "No sale shall be made pursuant to this rate schedule between (Applicant) and any affiliate of (Applicant) with a franchised service territory without first receiving Commission acceptance of the proposed sale pursuant to a separate filing under Section 205 of the Federal Power Act."

The Commission further requires these entities to include a code of conduct governing the relationship between the applicant and their traditional electric utility affiliate. This code of conduct is considered to be part of the market-based rate schedule, and should be included as a separate section, paginated to follow the main body of the market-based rate schedule. The Commission's standard code of conduct follows:

Statement of Policy
And Code of Conduct
With Respect to the Relationship Between
[Applicant] and [Traditional Electric Utility]

Marketing of Power:

1. To the maximum extent practical, the employees of [Applicant] will operate separately from the employees of [Traditional Electric Utility].

2. All market information shared between [Traditional Electric Utility] and [Applicant] will be disclosed simultaneously to the public. This includes all market information, including but not limited to, any communication concerning power or transmission business, present or future, positive or negative, concrete or potential. Shared employees in a support role are not bound by this provision, but may not serve as an improper conduit of information to non-support personnel.

3. Sales of any non-power goods or services by [Traditional Electric Utility], including sales made through its affiliated EWGs or QFs, to [Applicant] will be at the higher of cost or market price.

4. Sales of any non-power goods or services by [Applicant] to [Traditional Electric Utility] will not be at a price above market.

Brokering of Power

To the extent [Applicant] seeks to broker power for [Traditional Electric Utility]:

5. [Applicant] will offer [Traditional Electric Utility's] power first.

6. The arrangement between [Applicant] and [Traditional Electric Utility] is non-exclusive.

7. [Applicant] will not accept any fees in conjunction with any Brokering services it performs for [Traditional Electric Utility].

A code of conduct is not required for applicants who are not affiliated with a traditional electric utility. These applicants should explicitly state their lack of any affiliate that owns or controls a franchised service territory.

Sales to an Affiliate:

In certain cases the Commission has allowed entities to sell power pursuant to a market-based rate schedule to a traditional electric utility affiliate. In order for this to occur, the Commission must be assured that captive rate customers are protected. To show this, entities must make a separate section 205 filing with the Commission. For instance, the Commission has allowed entities to sell to their traditional electric utility affiliates whose customers are protected by a rate freeze or by retail choice. The Commission has explored this issue in cases such as AmerGen Energy Company, L.L.C., 90 FERC ¶ 61,080 (2000), Illinova Power Marketing, Inc., 88 FERC ¶ 61,189 (1999), and Pinnacle West Corporation, 92 FERC ¶ 61,248 (2000). See also, Entergy Services, Inc., 103 FERC ¶ 61,236 (2003).

Brokering Power for an Affiliate:

If a power marketer wishes to broker power for a traditional electric utility affiliate, the Commission imposes four conditions. First, the power marketer must offer the affiliates power first (i.e. before attempting to market its own power). The arrangement must be non-exclusive. The entity must simultaneously make publicly available to non-affiliates any information that is shared with the affiliate. Finally, no brokering charge may be assessed to the affiliate. These conditions must be explicitly stated in an applicant's code of conduct if the applicant wished to broker power for an affiliate. If the applicant does not wish to broker power for an affiliate, this should be stated in the application.

In cases in which a traditional electric utility brokers power for an affiliated power marketer, the Commission has accepted proposals which (1) require the traditional electric utility to charge the higher of its costs for the service or the market rate for such

service, (2) market its own power first, (3) simultaneously make public any information shared with the affiliated power marketer during brokering, and (4) post the actually brokering charges imposed on its internet site. See, MEP Investments, LLC et al., 87 FERC ¶ 61,209 (1999).

ANCILLARY SERVICES

An applicant may wish to sell ancillary services at market-based rates as a third-party provider. In Avista Corporation, 87 FERC ¶ 61,223 (1999) the Commission allowed these sales. At the same time, the Commission imposed certain conditions on this activity.

To make third party ancillary service sales, an applicant must (1) establish an Internet-based, OASIS-like site consistent with Commission requirements, (2) not sell ancillary services to a regional transmission organization (RTO) where the RTO has no ability to self-supply ancillary services but instead depends on third parties, (3) not sell ancillary services when the underlying transmission service is on the transmission system of a transmission provider with which the seller is affiliated, and (4) not sell to a purchaser who will use those services to fulfill its obligation under its OATT to offer ancillary services to its own transmission customers. An applicant's intent to sell ancillary services as a third party as well as these conditions should be explicitly stated in the applicant's market-based rate schedule.

The Commission has approved the sales of certain ancillary services at market-based rates in certain markets without imposing the conditions listed above. To make sales in these markets, an applicant must list the market in which it proposes to makes these sales as well as the ancillary services it wishes to sell in its market-based rate schedule. These markets include the RTO's and ISO's with Commission approved market monitoring and mitigation in place.

TRANSMISSION REASSIGNMENT

An applicant may wish to reassign transmission capacity. If so, the applicant's proposed rate schedule must include:

- A statement capping the price of reassignment at the highest of (1) the original rate paid for the transmission capacity, (2) the applicable transmission provider's maximum stated firm transmission rate on file at the time of transmission reassignment, or (3) the applicants own opportunity costs, capped at the applicable transmission provider’s cost of expansion at the time of the sale.
- A statement that opportunity cost will not be recovered in this case absent a separate Section 205 filing with the Commission.
- A statement indicating that the terms and conditions of the transmission reassignment must be those of the original grant by the transmission provider.
- A statement indicating that transmission capacity may only be reassigned to customers eligible to take service under the transmission provider's open access transmission tariff or other applicable transmission rate schedules.

These transactions must be reported in the applicant quarterly reports. All of these conditions must be listed in the market-based rate applicant's proposed rate schedule.

RESALE OF FIRM TRANSMISSION RIGHTS

An applicant may wish to resell firm transmission rights as well. These sales are allowed by the Commission if the applicant includes certain conditions in its market-based rate schedule.

Except for price, the terms and conditions under which the resale is made must be the terms and conditions under which the grant by the transmission providers is made. Further, firm transmission rights may only be resold to buyers eligible to purchase those rights from the transmission provider. Applicants should commit to report the names of these purchasers in their electronic quarterly reports.

WAIVERS AND AUTHORIZATIONS

When making an application for market-based rate authority, applicants typically request certain waivers and authorization. Some waivers are routinely granted by the Commission.

The following parts of the Commission's regulations are typically waived for applicants requesting market-based rate authority if waiver is requested in the market-based rate application:

- Part 41, regarding accounts, records, and memoranda;
- Part 101, regarding the uniform system of accounts; and
- Part 141, regarding statements and reports, with the exception of Parts 141.14 and 141.15. Licensees remain obligated to file the Form No. 80 and the Annual Conveyance Report.

Section 204 of the FPA grants the Commission jurisdiction over the securities issuances and assumption of liability by public utilities including entities with market-based rate authority. Part 34 of the Commission's regulations contain regulations implementing Section 204 of the FPA.

While the requirements of Part 34 of the Commission's regulations regarding securities and assumptions of liabilities are statutory in nature and cannot be waived, an applicant can request blanked approval of all future Section 204-type activities. If an applicant requests blanket approval under Part 34, a separate notice will be published in the Federal Register following the acceptance of the applicant’s market-based rate application and rate schedule. This notice will establish a period during which protests may be filed. Absent a request to be heard in opposition, an applicant is typically granted blanket authority under Part 34 of the Commission's Regulations.

Some applicants have requested waiver of the 60-day prior notice requirement for rate schedule filings made by public utilities. The Commission has typically granted waiver of this notice period for uncontested filings involving new services that are filed at least one day prior to the commencement of service. In certain cases, the Commission has allowed waiver of this notice period for market-based rate applicants in order to allow an effective date of the applicant's choosing. An applicants request for waiver of the 60-day notice period should be stated in the application along with the proposed effective date of the market-based rate schedule. The Commission will not allow an effective date prior to the day after the application was filed with the Commission.

The Commission typically waives Part 45 of its regulations with respect to any person who, at the time of application, is holding or may hold an otherwise proscribed interlocking directorate involving the applicant. These people are typically directed to file sworn applications indicating: (1) their full names and business addresses, (2) all jurisdictional interlocks, identifying the affected companies and the positions held by each person.

MARKET-BASED RATE SCHEDULE

A market-based rate application must include a proposed market-based rate schedule. Most applicants use a generic market-based rate schedule when filing an application. Although the sample rate schedule on the FERC website may apply to most entities, it does not cover all situations. It should be carefully examined and understood before filing.

A rate schedule must state the services or products an entity will make available. This can include electric energy, capacity, and ancillary services. If the entity includes ancillary services in the list of services they will make available, the rate schedule must conform to certain Commission requirements regarding the sale of ancillary services. The Commission has authorized certain markets for the sale of certain ancillary services. An applicant's market-based rate schedule must state the specific ancillary services the applicant will offer and the Commission approved market into which these services will be sold.

A market-based rate schedule must comply with Order 614 concerning designation and pagination of rate schedules and tariffs. All rate schedules and tariffs must have the following information placed on each sheet:

- On the top left corner of each page the exact name of the company must be shown, under which must be the words "Rate Schedule FERC No. ___ " or "FERC Electric Rate Tariff" along with the volume identification as appropriate.
- Each sheet must be number on the top right corner. This numbering should read "Original (or Revised) Sheet No. (number)"
- On the lower left corner should be "Issued by:" and the name of the issuing officer above the phrase "Issued on" followed by the issuance date of the proposed rate schedule or tariff.
- On the lower right corner should be the phrase "Effective on" followed by the proposed effective date of the rate schedule or tariff.

When an applicant files its initial rate schedule, it should be designated as “Rate Schedule FERC No. 1”. This designation is subject to change. For instance, if an applicant files revisions to its market-based rate schedule after that rate schedule has become effective, the revised rate schedule should be designated as “First Revised Rate Schedule FERC No. 1”. Subsequent revision should follow the same pattern (i.e. Second Revised Rate Schedule, Third Revised Rate Schedule, etc.).

If an entity wishes to revise just one sheet of a rate schedule, it does not have to redesignate the entire rate schedule. It may, if it wishes, only redesignate the new sheet by replacing "Original Sheet No. (number)" with "First Revised Sheet No. (number)" in the top right corner of the page. If accepted for filing, this new, revised sheet will supercede the sheet it was intended to revise.

The Commission laid out guidelines for designating rate schedules in Order 614. Most applicants for market-based rate will only use the aforementioned parts of Order 614, but if needed, more specific about rate schedule designation can be found in that order.

REGULATORY RESPONSIBILITIES

After the FERC accepts an entity's market-based rate schedule, there are a number of ongoing regulations with which that entity must comply. Many of these regulations have been relaxed in the case of entities authorized to make sales at market-based rates. For example, whereas most public utilities must file individual contracts, the FERC waives this requirement for entities with market-based rate authority. They instead are required to file Electronic Quarterly Reports regardless of the number of transaction that occurred during the quarter. There is also no charge for an initial application for market-based rate authority, and FERC fees are only assessed for entities with market-based rate authority if and when electricity sales occur.

The requirements with which an entity with market-based rate authority must comply include (but are not necessarily limited to):

- Electronically submitting Electric Quarterly Reports;
- Filing Notices of Change in Status to report any changes in the facts relied upon by the Commission when granting market-based rate authority including the acquisition of generation or transmission and the affiliation with any entity owning or controlling such assets;
- Notifying the Commission if the entity's name changes, if it merges with another entity, or has its rate schedule adopted by another entity (Section 35.16, Notices of Succession);
- Notifying the Commission if it desires to cancel its rate schedule and cease marketing activities (Section 35.15, Notices of Cancellation or Termination);
- Notifying the Commission if any of its officers or directors are a) an officer or director of more than one public utility, b) an officer or director of a public utility, any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility, or c) an officer or director of a public utility and of any company supplying electrical equipment to a public utility;
- Pay annual charges pursuant to 18 C.F.R §382.

These ongoing regulatory requirements continue in force until the market-based rate authorized entity files a notice of cancellation of its market-based rate schedule and this notice is accepted for filing by the Commission.

COMPLIANCE FILINGS

Electronic Quarterly Reports, reports of changes in status, and other filings made in response to a Commission order are considered to be "compliance" filings. For filings made in response to a Commission order such as reports of changes in status, the filing should include the filing entity's name, the type of filing (such as a notice of change in status), and a reference to the order that required the compliance filing.

The Secretary's office with assign the next available sub-docket number to the filing (-001, -002, etc.) Please submit notices of changes in status and updated market power analyses separately.

ELECTRONIC QUARTERLY REPORTS

On April 25, 2002, the Commission issued Order 2001, revising the reporting requirements imposed public utilities. Instead of filing separate transactional contracts, public utilities are now allowed to file transactional reports once per quarter in electronic form. More information on Electronic Quarterly Reports can be found on the Electronic Quarterly Report portion of this website.

Order 2001 changed the filing requirements applicable to agreements for public utilities with market-based power sales tariffs and rate schedules. Previous requirements that public utilities file agreements and Quarterly Transaction Reports, in hard copy format, detailing their market-based power sales transactions were rescinded as of July 1, 2002. Effective July 1, 2002, all executed market-based rate agreements will no longer be filed with the Commission in hard copy format. Instead, each public utility (including traditional electric utilities and power marketers with market-based rate authority) must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement; and (2) detailed transaction information for effective short-term (less than one year) and long-term (one year or greater) power sales during the most recent calendar quarter. Electric Quarterly Reports must be filed no later than the last day of the month following each calendar quarter.

CHANGES IN STATUS

Entities with market-based rate authority are required to inform the Commission of any changes in the information relied upon by the Commission in approving that entity's market-based rate application. These changes include (but are not limited to):

- Changes in ownership or control of generation and transmission by the applicant or its affiliates from that stated in the application.
- Changes in affiliation status with regard to entities that own or control generation or transmission, or that control a franchised service territory.

Changes of status notification CANNOT be included in an entity's Electronic Quarterly Report. This information must be filed separately.

In lieu of filing changes of status on an on going basis, entities with market-based rate authority may opt to include this information in their three-year market power analysis (See Morgan Stanley Capital Group, Inc., 69 FERC ¶ 61,175 (1994), clarified in Engelhard Power Marketing, Inc., 70 FERC 61,250 (1995).) If any change in status is reported, an entity must show it still satisfies the Commission's market power concerns.

In Enron Power Marketing, Inc., 65 FERC ¶ 61,305 (1993), order on reh'g, 66 FERC ¶ 61,244 (1994), the Commission explained that the reporting requirement does not apply to unwritten or unexecuted documents and contracts or to preliminary negotiations and drafts.

The Commission has determined that transitory holding of electric utility stocks by entities that provide securities related services are not viewed as affiliation, and therefore do not necessarily need to be reported in a change of status notification.

In Costal Electric Services Company, 71 FERC ¶ 61.374 (1995), the Commission stated that the filing of a notice of change in status will not, of itself, automatically upset the waivers and authorizations previously granted to an entity. However, the entity should provide an explanation demonstrating that the change in status does not affected the basis for its market-based rate authorization. This explanation should show, in the same way as an initial application for market based rate authority, that the entity satisfies the Commission's market power concerns.

MERGERS

An entity with market-based rate authority that plans to merge with another entity should file a Notice of Change in Status as described above. The merger or consolidation my also require authorization from the Commission under Section 203 of the Federal Power Act.

If an unaffiliated entity authorized to sell at market-based rates has agreed to become affiliated with an electric utility, it should revise its market-based rate schedule to prohibit sales to that entity at the time the merger is announced (See Central and South West Services, Inc., 82 FERC ¶ 61,001 (1998)). That entity should file a notice of change in status with the Commission, and, if applicable, agree not to trade with the merger partner pending consummation of the merger, and it should agree to abide by the Commission's requirements concerning the pricing of non-power goods and services and the sharing of information (See Cinergy, Inc., 74 FERC ¶ 61,281 (1996)).

As applicable, the entity should file a revised rate schedule incorporating these restrictions in the form of a code of conduct governing the relationship between the entity and its new affiliate. The entity should also submit a revised generation and transmission dominance analysis using the same information required in an initial market-based rate application, as the facts relied on by the Commission when granting market-based rates have changed.

ANNUAL CHARGES

All public utilities, as defined by the Federal Power Act, are subject to annual charges payable to the FERC. Requests for waiver of these charges are denied. However, since an entity with market-based rate authority is charge based on the quantity of power sold, these entities do not pay annual fees in years where they do not transact.

Market-based rate authorized entities must submit, under oath to the Secretary's Office at the Commission by April 30th each year the information described in 18 C.F.R. 382. This information is used by the Commission to calculate the annual charge for each public utility. This document should be sent to:

Magalie R. Salas, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

RE: Annual Charges Reporting Requirement No. 582

[Entity's Name]

Annual Charges Worksheet

(Amounts in Megawatt-hours)

	Sales for Resale	Exchange Delivered	Transmission Delivered	Mwh Totals
Long-term firm sales and Transmission				
Short-term firm sales and transmission				

An entity's first Reporting Requirement No. 582 need not be submitted until one full calendar year of operation is complete. For example if an entity receives market-based rate authority on June 1, 2003 then its first full calendar year will be 2004. Their first report must be submitted no later than April 30, 2005.

No docket number should be on an entity's Form No. 582. This will slow a form's delivery to the proper office. This form should not be combined with any other type of filing.

INTERLOCKS

Part 46 of the Commission's regulations (18 C.F.R. Part 46) requires utilities to report any interlocking directorate it may have. In Enron Power Marketing, Inc. 65 FERC ¶ 61,305 (1993), the Commission states that Part 46 is statutory in nature and

cannot be waived. Therefore, utilities must file information regarding any directors that also hold positions at other public utilities in accordance with Part 46.

Past 45 of the Commission's regulations (18 C.F.R. Part 45) requires directors holding positions at two or more utilities to file an application for authority to hold interlocking positions. The Commission waived these requirements in Enron and typically does so at present.

All filings regarding Part 46 should be sent, along with two copies to:

Magalie R. Salas, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

No docket number is necessary on these types of filings.